



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 17, 1991

Mr. Todd K. Brown
Acting Executive Director
Texas Workers' Compensation Commission
Southfield Bldg., 4000 South IH-35
Austin, Texas 78704

OR91-505

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13770.

The Texas Workers' Compensation Commission (the commission) has received a request for information relating to seven commission employment positions: six in the Hearings and Review Division and one in the General Counsel's Office. Specifically, the requestor seeks applications and resumes, job postings, interviewer's notes, pre- and post-interview screening data, and various notes, letters, and memoranda. Some of the requested information relates specifically to the requestor. Although you contend that all of the requested information is excepted from public disclosure under section 3(a)(3), you state that the commission will voluntarily disclose much of the requested information. You have submitted the remainder of the information to us for review. You claim that all of the remaining requested information is excepted from required public disclosure by section 3(a)(3) of the Open Records Act and that some of it is also excepted by section 3(a)(11).

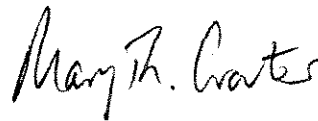
We have considered the exceptions you claim. Previous open records decisions issued by this office resolve your request. Open Records Decision No. 555 (1990) held that a section 3(a)(3) exception is applicable only when litigation is pending or may be reasonably anticipated and if the requested information relates to that litigation. Section 3(a)(3) forces parties to a lawsuit to obtain relevant

information through the normal process of discovery. Open Records Decision No. 551 (1990). Open Records Decision No. 386 (1983) held that the pendency of a complaint before the Equal Employment Opportunity Commission (EEOC) indicates a substantial likelihood of litigation and is therefore sufficient to satisfy section 3(a)(3).

You advise us that "the requestor has also filed a complaint with the Texas Commission on Human Rights and the EEOC alleging that the agency discriminated on the basis of sex" On that basis, we conclude that litigation is reasonably anticipated. Having reviewed the documents submitted to us, we further conclude that the requested information relates to the anticipated litigation and, unless previously disclosed through the discovery process, by court order, or by other means, may be withheld from required public disclosure by section 3(a)(3). Please note that this ruling applies only for the duration of the litigation and only for the information at issue here. See Open Records Decision No. 551. Because we resolve your request under section 3(a)(3), we need not address the applicability of section 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-505.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Ref.: ID# 13770

cc: Ms. Christine Delmas
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